

## **Exhibit A**

## SUMMONS IN A CIVIL ACTION

## UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

NICHOLAS MARTINO, NICOLE MARTINO, a minor, by  
Marybeth Martino, her parent and natural guardian and  
MARYBETH MARTINO

v.

RICHARD CRAFT and JOHN HAMMERSCHMIDT

CIVIL ACTION NO. 02-4633

TO: (NAME AND ADDRESS OF  
DEFENDANT)

John Hammerschmidt  
7 Greenbriar Lane  
Paoli, PA 19301

YOU ARE HEREBY SUMMONED and required to serve upon

## Plaintiff's Attorney (Name and Address)

Howard A. Rosenthal, Esq.  
Pelino & Lentz, PC  
One Liberty Place, 32nd flr.  
Philadelphia, PA 19103

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

Michael E. Kunz, Clerk of Court

Date: 7/12/02

(By) Deputy Clerk

TRICIA A. JONES

EXHIBIT

7-21-03 8:11

**TON**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Nicholas Martino,  
5 Gregory Lane  
Newtown Square, PA 19073

and

Nicole Martino, a minor, by  
Marybeth Martino, her parent and  
natural guardian  
5 Gregory Lane  
Newtown Square, PA 19073

and

Marybeth Martino  
5 Gregory Lane  
Newtown Square, PA 19073

Plaintiffs,

v.

Richard Craft  
659 Andover Road  
Newtown Square, PA 19073

and

John Hammerschmidt  
7 Greenbriar Lane  
Paoli, PA 19301

Defendants.

**COMPLAINT**

Plaintiffs, Nicholas Martino, Nicole Martino, a minor, by Marybeth Martino, her parent and natural guardian, and Marybeth Martino, in her own right, by their attorneys, bring this action against defendants, and aver as follows:

**I. STATEMENT OF JURISDICTION AND VENUE**

1. Jurisdiction is founded on this Court's federal admiralty jurisdiction pursuant to Article III, Section 2 of the United States Constitution and 28 U.S.C. § 1333 as the events or omissions giving rise to plaintiffs' claims occurred on the

Sassafras River, a navigable waterway, and were significantly related to traditional maritime activity.

2. Venue is proper in the Eastern District of Pennsylvania pursuant to 28 U.S.C. § 1391(b) in that both defendants reside in this judicial district and in the Commonwealth of Pennsylvania.

### II. THE PARTIES

3. Nicholas Martino ("Martino") is an adult individual residing at 5 Gregory Lane, Newtown Square, Pennsylvania 19072.

4. Nicole Martino ("Nicole") is a minor residing with her parent and natural guardian, Marybeth Martino, at 5 Gregory Lane, Newtown Square, Pennsylvania 19073.

5. Marybeth Martino is an adult individual residing at 5 Gregory Lane, Newtown Square, Pennsylvania 19072 and is the wife of Nicholas Martino.

6. Richard Craft ("Craft") is an adult individual residing at 659 Andover Road, Newtown Square, Pennsylvania 19073.

7. John Hammerschmidt ("Hammerschmidt") is an adult individual residing at 7 Greenbriar Lane, Paoli, Pennsylvania 19301.

### III. FACTS

8. On or about July 15, 2000, Craft and Hammerschmidt were co-owners of a vacation residence located on the Sassafras River in or near Galena, Maryland.

9. The Sassafras River is used, or is susceptible of being used, as a highway for commerce over which trade and travel are or may be conducted and is, therefore, a navigable waterway.

10. Located at the residence were two water craft

known as "wave runners" which Hammerschmidt owned and had the right and ability to permit or prohibit others including Craft from using.

11. At all relevant times, Hammerschmidt knowingly permitted Craft and others to use the wave runners.

12. On July 15, 2000, Martino, his wife, Marybeth, and their daughter, Nicole, were visiting the defendants' vacation residence as invited guests of Craft.

13. At approximately 4 to 5 p.m., at Craft's suggestion, Craft, his son, Martino and Nicole took the wave runners out for a ride on the Sassafras River. Martino and Nicole were riding on one of the wave runners, while Craft and his son were riding on the other.

\* 14. At all relevant times, Craft had a duty to persons traveling on the Sassafras River to operate his wave runner in a safe manner and take all due care to avoid injuring others by his operation of the wave runner.

\* 15. While operating his wave runner, Craft, without prior warning, drove directly into Martino's wave runner injuring both Martino and his daughter, Nicole.

16. Following the impact, Martino had to drive his wave runner with his leg broken and bleeding severely for approximately five minutes until he could reach the shore.

17. After Martino reached shore, an EMT team performed emergency treatment until Martino was taken by medivac helicopter to the R. Adams Crowley Shock Trauma Center in Baltimore, Maryland.

18. Nicole was taken to a local hospital by her mother.

19. Martino sustained severe, permanent, painful and disabling physical injuries, including:

a. a type three open tibia fracture of the left leg which, to date, has, required 23 surgical procedures and multiple, extended hospital stays for treatment which has included the placing, setting and re-setting an external fixator; extensive muscle grafting; reconstructive surgery and skin grafting; bone graft surgery; the removal of additional destroyed muscle; installation of a rod; the insertion of a port in Mr. Martino's chest for antibiotic treatment and extensive rehabilitation;

b. the permanent destruction of otherwise healthy muscle and skin tissue;

c. the onset of a heavy staph infection and chronic osteomyelitis which, if the infection develops a resistance to antibiotics, may require amputation of Martino's left leg;

d. internal bleeding and aggravation of the staph infection;

e. a loss of flexibility in Martino's ankle, foot and calf, requiring him to walk in a labored fashion and the shortening of one of Martino's legs, which requires him to wear custom lifts;

f. permanent scarring; and

g. constant pain in Martino's leg.

20. Martino's physical injuries are permanent in nature and are continuing.

21. Martino's physical injuries have directly limited, if not eliminated, his ability to remain physically active.

22. As a direct and proximate result of the accident, Martino has had to rely on a wheelchair or crutches to walk, cannot engage in many physical activities which he had previously enjoyed, such as exercising, playing in an adult soccer league and performing household chores, which he must now hire someone to do.

23. Martino's doctors have considered him disabled since the date of the accident and his injuries presently restrict his movement which currently limits his ability to work.

\* 24. Because injuries from the accident precluded the international travel required by his employer, Martino lost his job and current and future salary, bonus opportunities and options.

25. As a further direct and proximate result of the accident, Martino has suffered a loss of past and future earnings.

26. Martino's physical injuries are permanent in nature and his damages are continuing.

27. Moreover, as a direct and proximate result of the acts and omissions of Craft, as otherwise set forth in this Complaint, Nicole sustained severe injuries, pain and suffering, including a left fibula fracture requiring a cast.

28. The injuries Nicole sustained prevented her from participating in her usual athletic activities, including a

swimming team, tennis and golf programs and part of her fall soccer season, from the time of the accident until October, 2001.

29. Nicole's physical injuries caused her great pain and anguish and required significant expense for her treatment and care.

**COUNT I: NEGLIGENCE**  
(Nicholas Martino v. Richard Craft)

30. Plaintiffs incorporate by reference Paragraphs 1 through 29 of this Complaint.

31. At all relevant times, Craft owed a duty to Martino to operate his wave runner in a safe manner and take all due care to avoid injuring Martino by his operation of the wave runner.

32. Craft failed to use due care and caution when, without prior warning, he drove directly into Martino's wave runner causing serious injury to Martino.

33. Under the circumstances, Craft's operation of the wave runner was unreasonable, negligent and in reckless disregard for the safety of Martino in that he:

a. failed to learn how to properly and safely operate the wave runner and take reasonably necessary safety and training courses for the operation of such a craft;

b. failed to give adequate warning that he was going to travel in the direction of Martino and Nicole;

c. failed to keep proper lookout and observe the wave runner being operated by Martino even though it could clearly be seen;

d. accelerated too quickly and traveled at an

excessive or unsafe speed;

e. failed to maintain control over his wave runner to avoid colliding with the wave runner operated by Martino;

f. failed to give Martino sufficient time to pass;

g. failed to give adequate room to stop his wave runner;

h. operated his wave runner while intoxicated or under the influence of alcohol; and

i. otherwise operated his wave runner in a unsafe, negligent and reckless manner.

34. The collision and resulting injuries were a direct and foreseeable consequence of Craft's unreasonable, negligent and reckless operation of the wave runner.

35. Martino at all times operated his wave runner safely having signaled Craft that he was going to turn his wave runner around to head back to the residence, doing so in plain view of Craft and operating his vessel in a safe distance from Craft and otherwise navigating the wave runner in a safe manner.

36. As a direct and proximate result of Craft's negligent acts and omissions, Martino was injured and sustained severe damages.

WHEREFORE, plaintiff, Nicholas Martino, requests that this Court enter judgment in his favor in an amount in excess of \$75,000, together with interest and costs of suit.

**COUNT II: NEGLIGENCE**  
(Nicole Martino v. Richard Craft)

37. Plaintiffs incorporate by reference Paragraphs 1 through 36 of this Complaint.

38. At all relevant times, Craft owed a duty to Nicole to operate his wave runner in a safe manner and take all due care to avoid injuring her by his operation of the wave runner.

39. Craft failed to use due care and caution for the safety of Nicole when, without prior warning, Craft drove directly into the side of the wave runner on which Nicole was riding.

40. The collision and resulting injuries were a direct and foreseeable consequence of Craft's unreasonable, negligent and reckless operation of the wave runner.

41. As a direct and proximate result of Craft's negligent acts and omissions, Nicole was injured and sustained severe damages.

WHEREFORE, plaintiff, Nicole Martino, a minor, by Marybeth Martino, her guardian, requests that this Court enter judgment in her favor in an amount in excess of \$75,000, together with interest and costs of suit.

**COUNT III: NEGLIGENCE PER SE**  
(Nicholas Martino v. Richard Craft)

42. Plaintiffs incorporate by reference Paragraphs 1 through 41 of the Complaint.

43. Craft's unreasonable, negligent and reckless operation of the wave runner, as set forth in Paragraph 33 of this Complaint, violated, inter alia, Maryland Natural Resources Code § 8-701 et. seq., Code of Maryland Regulations 08.18.02.05, /

08.18.01.03, 08.18.01.05, 08.18.01.07 and 08.18.01.04, and the Federal International-Inland Navigation Rules.

44. Craft's violation of these statutes and regulations constitutes negligence per se.

45. Martino was within the class of persons these statutes and regulations were designed to protect and the harm which he sustained was the kind these statutes and regulations were designed to prevent.

46. Craft's violations of these statutes and regulations were a direct and proximate cause of Martino's injury and damage.

WHEREFORE, plaintiff, Nicholas Martino, requests that this Court enter judgment in his favor in an amount in excess of \$75,000, together with interest and costs of suit.

COUNT IV: NEGLIGENCE PER SE  
(Nicole Martino v. Richard Craft)

47. Plaintiffs incorporate by reference Paragraphs 1 through 46 of the Complaint.

48. Craft's unreasonable, negligent and reckless operation of the wave runner, as set forth in Paragraph 33 of this Complaint, violated, inter alia, Maryland Natural Resources Code § 8-701 et. seq., Code of Maryland Regulations §§ 08.18.02.05, 08.18.01.03, 08.18.01.05, 08.18.01.07 and 08.18.01.04, and the Federal International-Inland Navigation Rules.

49. Craft's violation of these statutes constitutes negligence per se.

50. Nicole was within the class of persons these statutes were designed to protect and the harm which she sustained was the kind these statutes were designed to prevent.

51. Craft's violations of these statutes were a direct and proximate cause of Nicole's injury and damage.

WHEREFORE, plaintiff, Nicole Martino, a minor, by Marybeth Martino, her guardian, requests that this Court enter judgment in her favor in an amount in excess of \$75,000, together with interest and costs of suit.

COUNT V: NEGLIGENCE  
(Nicholas Martino v. John Hammerschmidt)

52. Plaintiffs incorporate by reference Paragraphs 1 through 51 of this Complaint.

53. At the time of the accident, the wave runners were owned by and under the control of Hammerschmidt, who had the right and ability to permit or prohibit use of the wave runners by Craft.

54. From the time that Hammerschmidt initially permitted Craft to use the wave runners up through and including July 15, 2000, Hammerschmidt knew or should have known that Craft, because of his inexperience operating the wave runners, reckless propensities and previous unsafe operation of the wave runners, would likely operate the wave runners in a manner involving unreasonable risk of physical harm to others, including Martino.

55. Hammerschmidt acted unreasonably and negligently in permitting, or failing to prohibit, Craft's use of the wave runners.

56. Hammerschmidt's negligent entrustment of the wave runners to Craft was the proximate cause of Martino's injuries and damage.

WHEREFORE, plaintiff, Nicholas Martino, requests that this Court enter judgment in his favor in an amount in excess of \$75,000, together with interest and costs of suit.

**COUNT VI: NEGLIGENCE**  
(Nicole Martino v. John Hammerschmidt)

57. Plaintiffs incorporate by reference Paragraphs 1 through 56 of this Complaint.

58. At the time of the accident, the wave runners were owned by and under the control of Hammerschmidt, who had the right and ability to permit or prohibit use of the wave runners by Craft.

59. From the time that Hammerschmidt initially permitted Craft to use the wave runners up through and including July 15, 2000, Hammerschmidt knew or should have known that Craft, because of his inexperience operating the wave runners, reckless propensities and previous unsafe operation of the wave runners, would likely operate the wave runners in a manner involving unreasonable risk of physical harm to others, including Nicole.

60. Hammerschmidt acted unreasonably and negligently in permitting, or failing to prohibit, Craft's use of the wave runners.

61. Hammerschmidt's negligent entrustment of the wave runners to Craft was the proximate cause of Nicole's injuries and damage.

WHEREFORE, plaintiff, Nicole Martino, a minor, by Marybeth Martino, her guardian, requests that this Court enter judgment in her favor in an amount in excess of \$75,000, together with interest and costs of suit.

**COUNT VII: LOSS OF CONSORTIUM**  
(Marybeth Martino v. Richard Craft)

62. Plaintiffs incorporate by reference Paragraphs 1 through 61 of this Complaint.

63. At all relevant times, Craft owed a duty to Marybeth Martino to avoid interfering with her right to the aid, assistance, comfort, society, companionship and affection of her husband, Nicholas Martino.

64. As set forth above, Craft acted unreasonably and negligently in his operation of the wave runner, proximately causing serious injury and damage to Martino, her husband.

65. As a direct and proximate result of the negligent acts and omissions of Craft, as set forth in Paragraph 33 of the Complaint, Craft injured Martino in such a way as to deprive Marybeth Martino of her right to the aid, assistance, comfort, society, companionship and affection of her husband.

WHEREFORE, plaintiff, Marybeth Martino, requests that this Court enter judgment in her favor in an amount in excess of \$75,000, together with interests and costs of suit.

**COUNT VIII: LOSS OF CONSORTIUM**  
(Marybeth Martino v. John Hammerschmidt)

66. Plaintiffs incorporate by reference Paragraphs 1 through 65 of this Complaint.

67. At all relevant times, Hammerschmidt owed a duty to Marybeth Martino to avoid interfering with her right to the

aid, assistance, comfort, society, companionship and affection of her husband, Nicholas Martino.

68. As set forth above, Hammerschmidt acted unreasonably and negligently in permitting, or failing to prohibit, Craft's use of the wave runner, which proximately caused serious injury and damage to Martino.

69. As a direct and proximate result of Hammerschmidt's negligent entrustment of the wave runners, Nicholas Martino was injured in such a way as to deprive Marybeth Martino of her right to the aid, assistance, comfort, society, companionship and affection of her husband.

WHEREFORE, plaintiff, Marybeth Martino, requests that this Court enter judgment in her favor in an amount in excess of \$75,000, together with interests and costs of suit.

OF COUNSEL:

Pelino & Lentz, P.C.  
One Liberty Place  
1650 Market Street  
Thirty-Second Floor  
Philadelphia, PA 19103-7393  
215-665-1540

  
Howard A. Rosenthal  
Kevin C. Rakowski

Attorneys for Plaintiffs,  
Nicholas Martino and Nicole  
Martino, a minor, by her  
parent and guardian,  
Marybeth Martino and  
Marybeth Martino, in her  
own right

STATE OF MARYLAND  
WATERCRAFT ACCIDENT REPORT

RECREATIONAL <input type="checkbox"/>	COMMERCIAL <input type="checkbox"/>	BOTH <input type="checkbox"/>	MO 07	DAY 16	YEAR 00	TIME (MILITARY) 1921	DAY OF WEEK SAT	INCIDENT NUMBER 100017066 U		
OFFICED (MILIT) 1922	ACCIDENT SEVERITY (8)		ACCIDENT TYPE (9)					COLLISION TYPE (10)		
ARRIVED (MILIT) 1956	<input type="checkbox"/> Damage Only	<input checked="" type="checkbox"/> Incapacitating Inj.	<input type="checkbox"/> Grounding	<input type="checkbox"/> Sinking	<input type="checkbox"/> Collision Fix Object	<input type="checkbox"/> Falls in Boat	<input type="checkbox"/> Other (Specify)	<input type="checkbox"/> Head On	<input type="checkbox"/> Angle	
	<input type="checkbox"/> Possible Injury	<input type="checkbox"/> Fatal	<input type="checkbox"/> Capsizing	<input type="checkbox"/> Fire or Explosion	<input type="checkbox"/> Collision Fl Object	<input type="checkbox"/> Hit By Boat or Propeller		<input type="checkbox"/> Rear End	<input type="checkbox"/> Other	
	<input type="checkbox"/> Non-Incapacitating Inj.	<input type="checkbox"/> Missing	<input type="checkbox"/> Flooding	<input checked="" type="checkbox"/> Collision Vessel	<input type="checkbox"/> Falls Overboard	<input type="checkbox"/> Burns		<input type="checkbox"/> Side Swipe		
ALL VESSELS INVOLVED: 2	LOCATION OF INCIDENT (BAY, RIVER, CREEK, COVE, LAKE, ETC.) SASSAFRASS RIVER					LOCATION CODE	NEAREST TOWN GALENA	COUNTY KE		
AGE TO PROPERTY (IF OTHER THAN VESSEL)	OBJECT N/A	OWNER NAME (FIRST, MIDDLE, LAST & ADDRESS) N/A					DAMAGE SEVERITY			
							<input type="checkbox"/> Superficial	<input type="checkbox"/> Minimal		
							<input type="checkbox"/> Moderate	<input type="checkbox"/> Destroyed		
VESSEL NUMBER 1										
OPERATOR NAME (FIRST, MIDDLE, LAST) RICHARD ELLIS CRAFT			SEX M	DATE OF BIRTH MO. 01 DAY 28 YEAR 60	INJURY 1	COND 2	LICENSE NUMBER (SPECIFY) PA POLN 18791192			
RES (NUMBER AND STREET) 659 ANDOVER AA				CITY NEW TOWN, SECURITY PA	STATE PA	ZIP CODE 19073	HOME PHONE NUMBER 410-648-5647			
POSITIONartial Planner	EMPLOYER WEALTH ADVISORY	ADDRESS 40 MONUMENT RD,			STATE PA	ZIP CODE 19073	WORK PHONE NUMBER 616-353-3033			
OPERATOR BOATING EXPERIENCE NONE <input type="checkbox"/> UNDER 20 HRS <input type="checkbox"/> 20-100 HRS <input type="checkbox"/> 100-500 HRS <input checked="" type="checkbox"/> OVER 500 HRS				OPERATOR BOATING EDUCATION <input type="checkbox"/> USCAGA <input type="checkbox"/> STATE <input type="checkbox"/> USPS <input type="checkbox"/> LICENSED <input type="checkbox"/> N/A <input type="checkbox"/> NONE <input type="checkbox"/> OTHER						
COPERATOR'S NAME (FIRST, MIDDLE, LAST) (Same As OPERATOR)		ADDRESS (NUMBER AND STREET)			CITY	STATE	ZIP CODE	PHONE NUMBER		
MAKE OF VESSEL YAMAHA		MODEL XA8004	TYPE PWC	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	NAME OF VESSEL N/A	DOCUMENTED <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	REGIST. OR DOCUMENT NUMBER MD2855BL			
DR. PURP	HULL MATL 2	FUEL 1	YEAR 00	LENGTH 10'5"	WIDTH 40"	DRAFT 12"	SERIAL NUMBER (HIN) YAMA 3165A000	EST. DAMAGE (\$1) (BY WHOM) 50.00		
ENGINES 1	MAKE OF ENGINE YAMAHA	TYPE: <input type="checkbox"/> OUTBOARD <input type="checkbox"/> INBOARD/OUTBOARD <input checked="" type="checkbox"/> INBOARD		<input type="checkbox"/> VET <input type="checkbox"/> OTHER	HORSEPOWER 120		YEAR 00			
POINT OF TRAVEL WEST	POINT OF IMPACT PORT MID	P.O.B 2	H.P. RATING N/A	LEGAL CAPACITY N/A	EST. SPEED 20	VESSEL INSURED <input type="checkbox"/> YES <input type="checkbox"/> NO	UNKNOWN			
DAMAGE TO VESSEL SCRAPES IN The STARBOARD Bow				DAMAGE SEVERITY <input type="checkbox"/> Disabling Damage <input type="checkbox"/> Other Damage <input checked="" type="checkbox"/> Functional Damage <input type="checkbox"/> No Damage	NAME OF INSURANCE CO. AND AGENT N/A					
REMOVED TO N/A				BY N/A						
OCCUPANT LOCATION		OCCUPANT NAME (A) RICHARD CRAFT			ADDRESS	DOB 1-28-60	SEX M	INJURY 1	COND. 2	
1A		2.								
3.										
4.										
5.										
CODES										
ALL CODE		INJURY SEVERITY CODE			CONDITION CODE			FUEL CODE		
1. Glass		1. No Injury 2. Possible Injury 3. Non-Incapacitating			1. Apparently Normal 2. Had Been Drinking 3. Physical Defects			1. Other handicaps (Emotional prob, Etc.) 5. Conditions Unknown		
2. Steel		4. Incapacitating Inj. 5. Fatal 6. Missing			4. Other handicaps (Emotional prob, Etc.) 5. Conditions Unknown			1. Gasoline 2. Dies		
3. Other										

Operator locations by the letter "A" and  
located by their respective number.

## VESSEL NUMBER 2

## INCIDENT NUMBER:

OPERATOR NAME (FIRST, MIDDLE, LAST)	SEX	DATE OF BIRTH MO. DAY YEAR	INJURY	COND.	LICENSE NUMBER (SPECIFY)
NICHOLAS WALTER MARTINO	m	08-19-55	4	1	PA OW/16 560602

ADDRESS (NUMBER AND STREET)	CITY	STATE	ZIP CODE	HOME PHONE NUMBER
5 GREGORY LN	Newtown Square	PA	19073	610-353-3098

EMPLOYMENT	EMPLOYER	ADDRESS	STATE	ZIP CODE	WORK PHONE NUMBER
SALES MAN	MEAT INDUSTRY	BEVERLY HILLS	PA	N/A	215-632-4781

OPERATOR BOATING EXPERIENCE	OPERATOR BOATING EDUCATION
NONE <input type="checkbox"/> UNDER 20 HRS <input checked="" type="checkbox"/> 20-100 HRS <input type="checkbox"/> 100-500 HRS <input type="checkbox"/> OVER 500 HRS	<input type="checkbox"/> USCGA <input type="checkbox"/> STATE <input type="checkbox"/> USPS <input type="checkbox"/> LICENSED <input type="checkbox"/> NONE <input checked="" type="checkbox"/> OTHER

OWNER'S NAME (FIRST, MIDDLE, LAST)	ADDRESS (NUMBER AND STREET)	CITY	STATE	ZIP CODE	PHONE NUMBER
RICHARD CHAFT	659 ANDOVER RD	Newtown Square			610-

MAKE OF VESSEL	MODEL	TYPE	PWC	NAME OF VESSEL	DOCUMENTED	REGIST. OR DOCUMENT #
YAMAHA	X A8004	PWC	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	N/A	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	MD 2852 BL

COLOR	HULL MATL	FUEL	YEAR	LENGTH	WIDTH	DRAFT	SERIAL NUMBER (HIN)	EST. DAMAGE (\$.) (BY WHO)
HT/NAME	2	1	00	10'5"	40"	12"	YAMA 3166A 000	150.00

NO. OF ENGINES	MAKE OF ENGINE	TYPE:	<input type="checkbox"/> OUTBOARD <input type="checkbox"/> INBOARD/OUTBOARD <input checked="" type="checkbox"/> INBOARD <input type="checkbox"/> JET <input type="checkbox"/> OTHER	HORSEPOWER	YEAR
1	YAMAHA			120	00

SECTION OF TRAVEL	POINT OF IMPACT	P.O.B.	H.P. RATING	LEGAL CAPACITY	EST. SPEED	VESSEL INSURED
SOUTH west	PORT mid	2	N/A	N/A	20 KNOTS	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO

DESCRIBE DAMAGE TO VESSEL	DAMAGE SEVERITY	NAME OF INSURANCE CO. AND AGENT
SCRAPES TO PORT mid Fiberglass, TORN seat.	<input type="checkbox"/> Disabling Damage <input checked="" type="checkbox"/> Functional Damage <input type="checkbox"/> Other Damage <input type="checkbox"/> No Damage	ADDRESS AC/A

SEL REMOVED TO	BY
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UPANT LOCATION	OCCUPANT NAME	ADDRESS	DOB	SEX	INJURY
(1A) (2)	1. NICHOLAS MARTINO	5 GREGORY LN, NEWTON SQUARE PA	8-19-55	m	4
	2. NICOLE MARTINO	11	11	11	4-25-90 F 1
	3.				
	4.				
	5.				
	6.				

NAME	ADDRESS	DOB	TELEPHONE
1.			
2.			
3.			
4.			
5.			
6.			

IS TAKEN?	INVESTIGATED AT SCENE?	INVESTIGATION COMPLETE?	ALCOHOL TEST	TEST RESULTS
Yes	<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Yes	1 <input checked="" type="checkbox"/> 2 <input checked="" type="checkbox"/> VICTIM None Offered Blood Breathalyzer	1 <input type="checkbox"/> 2 <input type="checkbox"/> VICTIM Post Mortem Refused
No	<input type="checkbox"/> No	<input type="checkbox"/> No		1 <input checked="" type="checkbox"/> BAC 2 <input checked="" type="checkbox"/> BAC Victim <input type="checkbox"/> P...

CODES			
LAW CODE	INJURY SEVERITY CODE	CONDITION CODE	TEST RESULTS
ad	3. Aluminum	1. Apparently Normal	6. 1. Other handicaps (Emotional prob. Etc.)
steel	4. Steel	2. Had Been Drinking	7. Fatigued
glass	5. Plastic	3. Injured	8. Apparently Asleep
glass	6. Composite	4. Condition Unknown	9. Drunk
FUEL CODE			
1. Gasoline			
2. Diesel			

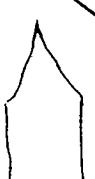
OPERATION AT TIME OF ACCIDENT		WEATHER	WIND	WATER	LIGHT
<input type="checkbox"/> CRUISING <input type="checkbox"/> <input type="checkbox"/> FUELING <input type="checkbox"/> APPROACHING DOCK <input type="checkbox"/> <input type="checkbox"/> FISHING/HUNT <input type="checkbox"/> LEAVING DOCK <input type="checkbox"/> <input type="checkbox"/> WATER SKIING <input type="checkbox"/> RACING <input type="checkbox"/> <input type="checkbox"/> SCUBA DIVING <input type="checkbox"/> TOWING <input type="checkbox"/> <input type="checkbox"/> SWIMMING <input type="checkbox"/> BEING TOWED <input checked="" type="checkbox"/> <input checked="" type="checkbox"/> MANEUVERING <input type="checkbox"/> AT ANCHOR <input type="checkbox"/> <input type="checkbox"/> DRIFTING <input type="checkbox"/> TIED TO DOCK <input type="checkbox"/> <input type="checkbox"/> UNKNOWN <input type="checkbox"/> WHITEWATER OPERATION <input type="checkbox"/> <input type="checkbox"/> OTHER (Specify)		<input type="checkbox"/> Clear <input checked="" type="checkbox"/> Cloudy <input type="checkbox"/> Rain <input type="checkbox"/> Snow <input type="checkbox"/> Hazy <input type="checkbox"/> Fog <input type="checkbox"/> Unknown	<input type="checkbox"/> None <input checked="" type="checkbox"/> Light (0-6 MPH) <input type="checkbox"/> Moderate (7-15 MPH) <input type="checkbox"/> Strong (15-25 MPH) <input type="checkbox"/> Storm (Over 25 MPH) <input type="checkbox"/> Unknown	<input checked="" type="checkbox"/> Calm <input type="checkbox"/> Choppy <input type="checkbox"/> Rough <input type="checkbox"/> Very Rough <input type="checkbox"/> Strong Current <input type="checkbox"/> Flood <input type="checkbox"/> Ebb <input type="checkbox"/> Unknown	<input checked="" type="checkbox"/> Day <input type="checkbox"/> Dawn <input type="checkbox"/> Dusk <input type="checkbox"/> Dark <input type="checkbox"/> Moon <input type="checkbox"/> Artificial <input type="checkbox"/> Unknown
			Wind Direction <u>WEST</u>	Est. Air Temp <u>80</u>	Est. Temp <u>68</u>

FIRE ONE LIGHT MEDIUM HEAVY CONGESTED UNKNOWN	REQUIRED EQUIPMENT ON BOARD								CONTRIBUTING FACTORS										
	VESSEL 1				VESSEL 2														
Yes	No	Used	Unk	Yes	No	Used	Unk	Personal Flotation Devices				Excessive Speed				Fault of Hull			
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Victim Wearing PFD				No Proper Lookout				Fault of Machinery			
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Fire Extinguishing Device				Operator Inattention				Fault of Equipment			
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Flame Arrestor				Operator Inexperience				Wake			
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Navigation (Lights, Shapes, Whistles, Foghorns, Bells, etc)				Negligent/Reckless Operation				Weather Conditions			
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>					Overloading				Hazardous Waters			
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>					Improper loading				Unknown			
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>					Alcohol Use				None Indicated			
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>					Drug Use				Other (Specify)			
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>					Fault of Other Person							

AID ADMINISTERED BY:				TIME EMS REQUESTED:	INJURED TAKEN BY:	CHARGE - LIST SECTION
ice	<input type="checkbox"/> Refused			<u>1921</u>	<u>MSP Transfer 6</u>	<input checked="" type="checkbox"/> Yes <u>NR 8-704/08-18-02-05L</u>
man	<input checked="" type="checkbox"/> None					<input type="checkbox"/> No
balance Personnel	<input type="checkbox"/> Unknown	<input type="checkbox"/> Other (Specify)		EMS ARRIVED TIME	INJURED TAKEN TO:	CHARGE - LIST SECTION
could				<u>1935</u>	<u>BALTIMORE SHOCK</u>	<input checked="" type="checkbox"/> Yes <u>NR 8-704/08-18-02-05L</u>
swim	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unk		<u>TRAUMA</u>	<input type="checkbox"/> No

NM (Label the vessel(s) with their respective number 1, 2, etc.)

SHOW NORTH BY ARROW



INCIDENT NUMBER: 1000170664

RELATIVE DESCRIPTION

MR. RICHARD CRAFT WAS THE OPERATOR OF VESSEL #1 MD 2855 BL,  
 MR. NICHOLAS MARTINO WAS THE OPERATOR OF VESSEL #2 MD 2852 BL.  
 BOTH INDIVIDUALS WERE SITTING ALONG SIDE EACH OTHER AT THE GASSAFRASS TALKING. THEY BOTH TOOK OFF AT THE SAME TIME UP ON PLANE, ESTIMATED SPEED WAS APPROX. 20 KNOTS. BOTH SKIS TURNED INTO ONE ANOTHER. MR. CRAFT'S SKI STRUCK MR. MARTINO'S SKI ON ITS PORT MID SIDE. THERE WAS DAMAGE TO THE PORT MID SIDE FIBER GLASS AND A TEAR IN THE SEAT ALONG WITH PAINT TRANSFER. MR. CRAFT'S SKI RECEIVED DAMAGE TO THE STABBOARH BOW (CHIPS IN THE FIBERGLASS). AS A RESULT MR. MARTINO WAS FLOWN TO SHOCK TRAUMA IN BALTIMORE AND TREATED FOR A BROKEN LEG.

BOATING ACCIDENT REPORT GIVEN TO:	VESSEL 1 Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	VESSEL 2 Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	VESSEL Yes <input type="checkbox"/> No <input type="checkbox"/>	SUPPLEMENTAL REPORT ATTACHED Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	STATUS OPEN <input type="checkbox"/> CLOSED <input checked="" type="checkbox"/> SUSPENDED <input type="checkbox"/>
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INVESTIGATING OFFICER <u>PL. ROBERT KERSEY</u>	ID NUMBER <u>1316</u>	REPORTING AGENCY <u>NRP</u>	DATE <u>7-15-00</u>
ASSTED BY: (Investigator's Signature) <u>PL. Robert Alexander</u>	ID NUMBER <u>1227</u>	ASSISTING WITH INVESTIGATION YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	DATE <u>7-27-00</u>
ADVISOR <u>ST. ST. Bk</u>	DATE <u>7-26-00</u>	APPROVED BY <u>C. Q. Baug</u>	DATE <u>7/30/00</u>

## **Exhibit B**

MARYBETH MARTINO

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA  
CIVIL ACTION NO. 02-4633

NICHOLAS MARTINO; ) DEPOSITION UPON  
NICOLE MARTINO, a minor, )  
by Marybeth Martino, her ) ORAL EXAMINATION  
parent and natural guardian,) )  
and MARYBETH MARTINO, ) OF  
)  
Plaintiffs, ) MARYBETH MARTINO  
)  
- VS - )  
)  
RICHARD CRAFT and )  
JOHN HAMMERSCHMIDT, )  
)  
Defendants. )  
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TRANSCRIPT OF DEPOSITION, taken by and  
before SHAMEKA MASON, Certified Court Reporter and  
Notary Public, at the Law Offices of BENNETT,  
BRICKLIN & SALTZBURG, 1601 Market Street, 16th  
Floor, Philadelphia, Pennsylvania, on Monday, July  
21, 2003, commencing at 4:36 p.m.

**ORIGINAL**

REPORTING SERVICE ASSOCIATES (RSA)  
A Veritext Company  
1845 Walnut Street-15th Floor  
Philadelphia, PA 19103  
(215) 241-1000

18  
1. She wasn't in camps, she would watch her, but she  
2. would then drive her, because I was leaving at  
3. like 5 o'clock in the morning, 6 o'clock, a lot of  
4. times, not getting home until 10:00 or 11:00 at  
5. night. So she was kind of running the house for  
6. me.  
7. Q. How long was that pattern going on before  
8. You knew that Katherine was ill?  
9. A. Kathy's first incident was the 4th of July  
10. incident. Just before the accident she had a bad  
11. episode where she doubled up in pain. His  
12. accident was July. She had a CAT scan -- or  
13. an ultrasound first and then a CAT scan done,  
14. because they saw something on the ultrasound after  
15. his accident while he was still in the hospital,  
16. because the doctor called there with her CAT scan  
17. results in his room, and that's where they really  
18. saw something they considered lumps in her  
19. stomach, and then they sent her for an endoscopy  
20. in Radnor.  
21. They saw something in her liver, so they  
22. sent her to have another ultrasound done. Both of  
23. those tests were done while he was still in the  
24. hospital. Those came back and recommended another

1 took a section of her stomach out. The biopsy results were not good on that. So we went up to 2 Sloan-Kettering then. They recommended they take her whole stomach out. On November 13th of that 3 year they took her whole stomach out. She came 4 home the day before Thanksgiving. She developed 5 complications, and she went back in the day after 6 Thanksgiving and they had to reoperate to take out 7 a portion of her intestine. 8 Thanksgiving and they had to reoperate to take out 9 a portion of her intestine. 10 At this point then they got pathology 11 results on those. All of those showed very 12 aggressive cancers, but for the last three years 13 she's had clean CAT scans. She has two more years 14 to go before they will know for sure whether the 15 cancer metastasized or not. 16 So she has at this point not been cleared, 17 I guess is the answer. They told us they won't 18 know for sure for two more years whether those 19 tumors metastasized anywhere else. 20 Q. At some point there was a time when Kathy 21 was in New York at Sloan-Kettering? 22 A. Her surgery was done -- we decided because 23 of his condition and hers to have the second 24 surgery done at University of Pennsylvania even

21. though Sloan-Kettering recommended it be done up  
2. there.  
3. Q. At some point he's in Delaware County and  
4. she's here in the hospital and you're going back  
5. and forth?  
6. A. Right. That was in the November surgeries.  
7. Q. Before this incident took place your  
8. husband was employed with Merit?  
9. A. Correct.  
10. Q. Can you just tell me overall what your  
11. perception was with his satisfaction with that job  
12. before the incident took place?  
13. MR. MCMULLEN: Object to form.  
14. THE WITNESS: I think before the  
15. incident took place he liked the job a lot.  
16. I think he and Ted Kachel hit it off  
17. really, really well, and as a result of  
18. that when he found out about it, Ted called  
19. in the hospital and said how much he loved  
20. Nick and just for him to get better and not  
21. to worry about things.  
22. BY MS. CARLOS:  
23. Q. You've heard him about how much he used to  
24. travel for Merit when he had that job. Is that a